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REMARKS

Applicants have carefully reviewed the Office Action dated May 20, 2005. Claims 1, 2, 4, 5 and 7-11 are pending in this application. Applicants have amended Claim 1 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 1-2 and 8-10 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Kitsukawa*, U. S. Patent No. 6,282,713. This rejection is respectfully traversed with respect to the amended claims.

The primary issue in distinguishing the claims of the present application over the *Kitsukawa* reference is that associated with the timing as to where the inducement shows up in the program and as to where the actual non-advertising content information is disposed. In Applicants' invention, an inducement can be provided at any time, typically preceding the actual delivery content and the code. This constitutes a first portion of the unique information provided to the end user. The description of this pre-announcement is described with respect to the Figure 26, beginning on page 53, line 12. Thus, the idea is that the user will be prepared for the advertisement when it occurs, or at least prior to it occurring. Thus, there is some type of requirement by this action that is imputed to the user, although that aspect is not set forth in the claims. Thus, there is a first portion that occurs some time prior to the desired time, at which desired time an encoded tone will be received that is proximate in time to some event that occurs in the broadcast. This requires there to be two separate times within the broadcast. The *Kitsukawa* reference, as pointed out by the Examiner, provides an alert. This portion is set out in *Kitsukawa* at column 7, as follows:

... The advertisement mode enables display of the advertising information. The stored advertisement mode results in the storing of the advertising information for presentation at a later time. The non-advertisement mode prevents display of the advertising information. A determination is made, at step 406, whether an advertisement mode is selected. If an advertisement mode is not selected, operation continues at step 418. If an advertisement mode is selected, operation continues at step 408, at which the viewer is alerted when advertising information is available for an item displayed in a scene of

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a television program broadcast. The viewer alert comprises a tone and at least one displayed mark, wherein the displayed mark may be superimposed over the broadcast of a television program on the screen, but the embodiment is not so limited. The displayed mark of one embodiment comprises an indicator for each item for which advertising data is available, and the indicators may be representative of the items to which the indicators correspond, but the embodiment is not so limited.

It can be seen that the alert tone, which comprises one embodiment of the alert, occurs at substantially the same time as the availability of the advertising information for an item displayed in a scene of a television broadcast. Therefore, the user must actually be alerted during the presentation of the advertisement so that they watch the program during the presentation of the advertising. Therefore, this would require that Applicants' first portion, the pre-announcement portion, occur at the "desired time" set forth in the claims. The claims specifically provide that this is at a different time. As such, Applicants believes that *Kitsukawa* does not anticipate or obviate Applicants' present inventive concept, as defined by the amended claims and, therefore, respectfully requests withdrawal of the 35 U.S.C. §102 rejection with respect to Claims 1-2 and 8-10.

Claims 4-5, 7, 9 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Kitsukawa* in view of *Marsh*, U. S. Patent No. 5,848,397. This rejection is respectfully traversed with respect to the amended claims.

Claims 4-5, 7, 9 and 11 are dependent claims, dependent upon Claim 1. The addition of the *Marsh* reference does not cure the deficiencies noted herein above with respect to *Kitsukawa*. Therefore, Applicants respectfully requests withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 4-5, 7, 9 and 11.

Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-24,739 of HOWISON & ARNOTT, L.L.P.

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